IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 13TH SEPTEMBER 2007 / 22ND BHADRA 1929

Crl.MC.No. 2876 of 2007()

CC.186/2001 of CHIEF JUDICIAL MAGISTRATE COURT, THRISSUR

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PETITIONER: IST ACCUSED

JOSE RAPHAEL,S/O.RAPHAEL,
RESIDING AT "AISWARIA GARDENS"
ELUVATHINGAL HOUSE,NOW RESIDING NEAR
BUTCHERY, KURIACHIRA.

BY ADV. SRI.P.SANTHOSH (PODUVAL)
SMT.R.RAJITHA

RESPONDENTS:

STATE OF KERALA
REP. BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.GIKKU JACOB

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 13/09/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

Crl.M.C.No.2876 of 2007

Dated this the 13th day of September, 2007

O R D E R

The petitioner is the 1st accused in a prosecution for offences punishable, inter alia, under Section 420 I.P.C. The crux of the allegations against him is that he along with the co-accused had induced gullible kuri subscribers to subscribe amounts to the chit run by the company with fraudulent motive. After receiving the amounts from the subscribers, the establishment was closed and payment was not made to the subscribers. This, it is submitted, is the short allegation.

2. The prosecution evidence was over. Thereafter the accused was examined under Section 313 Cr.P.C. The accused had examined a defence witness also. The petitioner/accused had attempted to advance a contention that the petitioner and his wife, the co-accused were not having any connection with the finance company on the date on which the alleged offence is said to have been committed.

2. Thereafter the prosecution filed an application under Section 311 Cr.P.C to permit the prosecution to examine a witness. That witness was questioned in the course of the investigation. Copy

of the statement of the witness has been furnished to the petitioner. The learned Magistrate accepted the said request of the prosecution to examine one more witness - evidently invoking the powers under Section 311 Cr.P.C.

3. The witness sought to be examined is a witness who was allegedly a witness on whom deception was practised by the accused persons. The learned counsel for the petitioner submits that the examination of such additional witness was totally unnecessary and at any rate there were no circumstances justifying the grant of permission under Section 311 Cr.P.C for examination of such witness.

4. I have heard the learned counsel for the petitioner. It cannot probably be urged that the petitioner is not a necessary witness. He was examined in the course of investigation also. In these circumstances, I am of the opinion that the permission granted to the prosecution to examine the witness, even though at the belated stage after the defence evidence was adduced, cannot be held to suffer from any such vice as to justify or warrant the invocation of the extraordinary inherent jurisdiction under Section 482 Cr.P.C. The case diary statement of the witness has been read over to me. I am not satisfied that examination of that witness would in any way result in any prejudice or failure/miscarriage of justice. The learned counsel for

the petitioner submits that the witness is sought to be examined to neutralise the effect of evidence by DW1. Of what use the evidence of that witness can be put to depend upon the evidence that would be tendered by the said witness now. In any view of the matter, the permission granted under Section 311 Cr.P.C by the learned Magistrate to the prosecution to examine one more witness does not warrant or justify the invocation of the jurisdiction under Section 482 Cr.P.C.

5. This petition is hence dismissed.

(R.BASANT, JUDGE)

rtr/-